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‘Truthiness’ is vital to political speech, according to humorist’s amici

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By [Debra Cassens Weiss](#)

“Truthiness” and political satire are imperiled by an Ohio law that makes it a criminal offense to tell political lies, according to a U.S. Supreme Court amicus brief filed by the Cato Institute and satirist P.J. O’Rourke.

Truthiness means a truth that comes from the gut without regard to evidence or logic, the [brief](#) (PDF) explains. It is a term originally coined by Stephen Colbert [in 2005 on his show *The Colbert Report*](#). It’s a key part of political discourse and protected by the First Amendment, according to the brief. [Above the Law](#) has highlights from the brief, which makes its points with humor.

“After all,” the brief says, “where would we be without the knowledge that Democrats are pinko-communist flag-burners who want to tax churches and use the money to fund abortions so they can use the fetal stem cells to create pot-smoking lesbian ATF agents who will steal all the guns and invite the UN to take over America? Voters have to decide whether we’d be better off electing Republicans, those hateful, assault-weapon-wielding maniacs who believe that George Washington and Jesus Christ incorporated the nation after a Gettysburg re-enactment and that the only thing wrong with the death penalty is that it isn’t administered quickly enough to secular-humanist professors of Chicano studies.”

Above the Law proclaims the document the “best amicus brief ever.” The blog identifies this footnote as a shout-out to the Supreme Court’s *U.S. v. Alvarez* decision, which [struck down a law](#) that makes it a crime to lie about earning military medals: “Amici and their counsel, family members, and pets have all won the Congressional Medal of Honor.”

The brief offers examples of truthy statements that contribute to political discourse, including: “Everybody knows that the economy is better off under [Republican/Democratic] presidents—who control it directly with big levers in the Oval Office.” A footnote tells the reader to circle the appropriate political party.

Any injury from truthy statements is best remedied by pundits, satirists and, if necessary, civil defamation suits, the brief says. Nor is government well-suited to examine falsehood. The brief offers this statement by President Barack Obama as an example: “If you like your health-care plan, you can keep it.” Politifact said the statement was accurate in 2008, but deemed it the “lie of the year” in 2013.

The brief was filed in *Susan B. Anthony List v. Driehaus*, [a pending Supreme Court case](#) that considers whether two conservative groups have the right to challenge an Ohio law that bars knowing or reckless false statements about political candidates. One of the groups, the Susan B. Anthony List, is an anti-abortion advocacy group that planned to run a billboard ad accusing a Democratic congressman of voting for taxpayer-funded abortion. The group was basing its claim on the lawmaker’s vote for the Obama administration’s health-care law, which does not provide taxpayer-funded abortion.

Edited at 9:00 a.m. to add a reference to Stephen Colbert.